

MFS Rule - Chapter 23 Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting

Effective Date: January 2, 2005

**MAINE DEPARTMENT OF CONSERVATION
MAINE FOREST SERVICE**

**COMPARISON OF
PROVISIONALLY ADOPTED RULE (APRIL 14, 2004)
AND
ADOPTED RULE (AUGUST 5, 2004)**

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04 **DEPARTMENT OF CONSERVATION**
058 **BUREAU OF FORESTRY**
Chapter 23: **TIMBER HARVESTING STANDARDS TO SUBSTANTIALLY**
 ELIMINATE LIQUIDATION HARVESTING

AUTHORITY. 12 MRSA, c.~~hapter~~ 805, sub-~~e.chapter~~ 3-A; Public Law 2003, c.~~hapter~~ 422.

SUMMARY. This rule establishes standards for timber harvesting on lands that are sold or offered for sale within five years of the date of purchase of the parcel. It also specifies circumstances which are exempt from these rules.

SECTION 1. PURPOSE

The purpose of this rule is to substantially eliminate the practice of liquidation harvesting. The Legislature has defined liquidation harvesting as “the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within 5 years.”¹

SECTION 2. AMENDMENTS TO MAINE FOREST SERVICE CHAPTER 20
(FOREST REGENERATION AND CLEARCUTTING STANDARDS)

Sections 4.~~D.E.~~ and 4.~~E.F.~~ of this rule constitute amendments to Sections 2.A.14, and 2.A.19 of MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards) as adopted on April 28, 1999.² [Corrected section references.]

SECTION 3. SCOPE AND APPLICABILITY

A. SCOPE. This rule establishes timber harvesting standards for forest lands in Maine which are purchased or acquired after the effective date of this rule, and harvested and sold or offered for sale or otherwise conveyed within five years of acquisition.

Unless an exemption applies, it is a violation of this rule and of the statute if a landowner conducts timber harvesting on a parcel without complying with this rule and then sells, offers for sale, or otherwise conveys the parcel, or any portion thereof, within five years of its acquisition.

B. APPLICABILITY. Whenever provisions of this rule are less stringent than corresponding provisions of applicable federal, state, or municipal law or regulations, the more stringent provisions apply.

¹ The term “timberland” has the same meaning as “forest land” as defined in this rule.

² A copy of this rule may be obtained from: [Maine Forest Service, 22 State House Station, Augusta, ME 04333-0022, Ph: 207-287-2791, Internet: www.maineforestservice.org.](http://MaineForestService.org) [Moved footnote]

SECTION 4. DEFINITIONS

For the purpose of 12 MRSA, Chapter 805, sub-chapter 3-A and this rule, the following terms are defined as follows. Unless otherwise provided herein, this rule incorporates by reference the definitions contained in MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards).^{*}

A. Adequately Stocked Stand means for even aged stands a forest stand that contains C-line stocking as defined by the stocking guide relevant to particular species published by the USDA Forest Service. For uneven-aged management, “adequately stocked stand” means that the stocking level of acceptable growing stock trees must not be less than 60 square feet of basal area per acre.

B. Area Affected by a Harvest means the area where timber harvesting activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest. [Definition added by legislative committee, minor grammatical corrections made.]

B.C. Certified Master Logger means a timber harvester certified under the Master Logger Certification Program, a program administered by the Professional Logging Contractors of Maine, a non-profit corporation of Maine, according to standards promulgated by that program dated ~~01~~ April 1, 2003.

C.D. Certified Resource Manager means a licensed forester whose sustainable forest management of a client’s forest lands is verified ~~by~~ an independent 3rd party audit.

D.E. Forest Land means land primarily covered with trees, and where commercial timber harvesting is not precluded by legal requirement.

E.F. Forest Stand means a contiguous group of trees sufficiently uniform in age class, distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

F.G. High Grading means timber harvesting that removes the most commercially valuable trees and leaves a residual stand composed primarily of trees of poor quality, poor condition, unable to respond to release from competition, and/or non-commercial species.

G.H. Independent 3rd Party Certification means a system that verifies that forest management is consistent with a certification program’s standards through an independent 3rd party audit of the management of forest lands. To be considered an “independent 3rd party certification” system:

1. The certification program, including but not limited to the standards for awarding certification and the protocols for ascertaining compliance must be developed and

^{*} -A copy of the Forest Practices Act rule may be obtained from: Maine Forest Service, 22 State House Station, Augusta, ME 04333-0022, Ph: 207-287-2791, Internet: www.maineforestservice.org. [Footnote moved.]

administered by an entity with no financial interest in the entity seeking certification except by reason of the contract for certification services;

2. The organization retained to perform the certification audit must receive no financial benefit from timber harvesting on the land or by the entity being audited, except for the contractual relationship for the audit service.

H.I. Liquidation Harvesting means the purchase or other acquisition of forest land followed by a timber harvest that ~~is~~does not ~~in compliance~~comply with Section 6 of this rule, and the subsequent sale, offer for sale, or other conveyance of the harvested land, or any portion of it, within 5 years. [Minor grammatical edit.]

I.J. Parcel means the contiguous area within one municipality, township, or plantation owned by one person or group of persons in common or joint ownership.

J.K. Rare ~~or exemplary~~ natural community means a plant community rated as S1 or S2 by the Maine Natural Areas Program.³ [Deletion made by legislative committee.]

K.L. Responsible party means all of the following persons or entities, jointly and severally:

1. The landowner, or landowners, who owned the property at the time a timber harvest subject to this rule was conducted;
2. The landowner's designated agent at the time a timber harvest subject to this rule was conducted;
3. The Licensed Forester and/or the employer of the Licensed Forester who:
 - a. Signed the harvest plan for a timber harvest subject to this rule; or
 - b. Supervised a timber harvest subject to this rule; or
 - c. Certified that a timber harvest subject to this rule was conducted in accordance with a timber harvest plan required by this rule.
4. The timber harvester who conducted a timber harvest subject to this rule.

L.M. Threatened, ~~r~~ or Endangered Species means ~~plant~~plants and animal species listed as threatened or endangered by the U.S. Fish and Wildlife Service, the Maine Department of Inland Fisheries and Wildlife, or the Maine Natural Areas Program. [Changes made by legislative committee.]

M.N. Timber Harvesting means the cutting or removing of timber for the primary purpose of selling or processing forest products.

N.O. Timber Harvest Plan means a site-specific document signed by a Licensed Forester outlining proposed timber harvesting activities that are consistent with the standards established in this rule.

O.P. Timberland has the same meaning as "forest land" in this rule.

³ A current listing may be obtained by contacting the Maine Natural Areas Program, 93 State House Station, Augusta, ME 04333-0093.

SECTION 5. EXEMPTIONS

This chapter does not govern timber harvesting on forest lands that meet one or more of the following conditions:

- A. Where the land is purchased before or held for at least 5 years following the effective date of these rules. Any land that is exempt from this rule remains exempt, notwithstanding the acquisition of contiguous land subject to this rule;
- B. Where the timber harvesting is on land that has received independent 3rd-party certification ~~and where an auditor determines that any harvesting on any parcel sold within 5 years of purchase has conformed to the requirements of the certification system.~~ [Deletion made by legislative committee.]
- C. Where the land is managed and the timber harvest is supervised by a Certified Resource Manager; in accordance with the standards of the certification program; [Addition made by legislative committee, minor grammatical correction.]
- D. ~~Which are within a parcel of land containing~~ Where the area affected by a harvest occupies 1,000 -acres or less ~~that, and the harvest~~ is ~~harvested-conducted~~ by a Certified Master Logger ~~according to a forest management plan prepared by a Licensed Forester,~~ and the Forest Operations Notification is signed by the Certified Master Logger; The Certified Master Logger involved shall be responsible for demonstrating to the satisfaction of the Maine Forest Service that the harvested area is 1,000 acres or less; [Changes made by legislative committee.]
- E. Where the landowner owns less than 100 acres, ~~including non- of forest land, total ownership~~ statewide; [Changes made by legislative committee, “timberland” changed to “forest land” for consistency.]
- F. Where the landowner has obtained, prior to commencing timber harvesting, the necessary permit or permits from a federal, state, and/or local governmental entity to change the land use from forest land to a nonforest use (i.e., for development or agriculture). The area exempted shall be that area that is actually to be converted. A copy of the permit or permits must be submitted with the Forest Operations Notification. If the land use change is conversion to a subdivision, the exemption for each lot is limited to 5 acres or the lot size specified in the permit granted by the appropriate governmental entity, whichever is smaller;
- G. Where the parcel, ~~including non-forest land, is~~ contains less than 20 acres ~~in size; of forest land;~~ [Changes made by legislative committee, “timberland” changed to “forest land” for consistency.]
- H. Where the parcel, or any portion thereof, is conveyed to another party due to inheritance, court order, transfer of deed in lieu of foreclosure, or bona fide gift without any consideration to a person related to the landowner by blood, marriage, or adoption. The exemption for a bona fide gift is conditioned upon the land not being further conveyed by the donee in a non-exempt transaction within 5 years from the date of the gift; [Changes made by legislative committee.]

- I. Where the parcel, or any portion thereof, is conveyed to a government entity exercising the power of eminent domain, or the transfer is under threat of the exercise of such authority; [Changes made by legislative committee.]
- J. Where the parcel, or any portion thereof, is conveyed ~~to another party~~ as a result of partitioning lands held in common and undivided ownership, sales of common and undivided interests in such lands, and trading common and undivided interest in lands; provided that in each case the recipient of the lands or interests in land is one of the owners of the property at the time when these rules become effective or at the time of initial purchase; [Changes made by legislative committee.]
- K. Where the parcel, or any portion thereof, is conveyed for bona fide roads and rights of way; [Changes made by legislative committee.]
- L. Where the forest products harvested or processed are for personal use by the landowner.

SECTION 6. HARVEST STANDARDS⁴

Timber harvesting on a parcel of land, any portion of which is sold, offered for resale, or otherwise conveyed within five years of the date of purchase or acquisition of the parcel, and which is not exempted by Section 5 of this rule, must satisfy one of the ~~three~~ following four conditions:^{*} [Change made by legislative committee.]

A. Option 1. Basal area removal limited.

Timber harvesting must not remove more than 50 percent of the basal area of trees 4.5" DBH and larger, present on the entire parcel at the time of purchase. Timber harvesting must not result in high grading and must include measures to protect advanced regeneration by minimizing the area damaged by logging equipment.

B. Option 2. Accredited Timber Harvesters and Licensed Foresters

- 1. Timber ~~harvesting on parcels~~ harvests where the area affected by the harvest occupies an area of 100 acres or less conducted by timber harvesters, and/or supervised by Licensed Foresters, either of whom have successfully completed training in a timber harvest planning, layout, and operations course accredited by the Bureau, and who have signed an attestation agreeing not to participate in liquidation harvesting. The accredited timber harvester and/or licensed forester involved shall be responsible for demonstrating to the satisfaction of the Maine Forest Service that the harvested area is 100 acres or less. [Changes made by legislative committee.]
- 2. Accreditation by the Bureau will require periodic renewal and is contingent upon compliance with state laws and rules governing timber harvesting, including 12 MRSA, Chapter 206-A; 12 MRSA, Chapter 805, ~~and~~ 38 MRSA, Chapter 3; and 36 MRSA, Chapter 105; agency rules implementing those chapters; and municipal Shoreland Zoning Ordinances. [Changes made by legislative committee.]

⁴Note: Landowners may request the Maine Forest Service to review their proposed timber harvesting activities to ensure compliance with this rule. [Minor grammatical changes.]

^{*} ~~Note: Landowners may request assistance from the Maine Forest Service in reviewing their proposed timber harvesting activities to ensure compliance with this rule.~~

C. Option 3. Timber harvest plan developed prior to timber harvest.

1. Prior to a timber harvest subject to this rule, a site specific timber harvest plan must be prepared that contains the following elements:
 - a. Landowner's name, address, and telephone number.
 - b. Designated agent's name, address, and telephone number (if applicable).
 - c. Signature and license number of Licensed Forester preparing or approving the plan.
 - d. Forest Operations Notification number and the date it was filed.
 - e. Total parcel acreage;
 - f. A stand-specific narrative that includes:
 - i. A description of the pre-harvest stand, including information on approximate stand acreage, stocking, timber volumes, timber quality, potential for increases in future timber volume and value, an assessment of wind firmness and other stand characteristics relevant to the planned harvest;
 - ii. For harvests that will result in an adequately stocked stand, a silvicultural rationale for the harvest in each stand that explains how the harvest will maintain or improve stand productivity, grow stands to sawtimber size, improve timber quality, and specifically avoid high grading. The rationale must specify actions that will be taken to minimize damage to the residual stand, including without limitation minimizing the area occupied by skid trails and retaining adequate residual stocking to reduce the risk of blowdown. The rationale must include a description of the residual stand that will result from the harvest, including but not limited to species, stocking, tree condition, size classes, and other stand characteristics.
 - iii. For harvests that will result in an understocked stand, and for regeneration harvests, a silvicultural rationale that explains the reason justifying the harvest, which must include at least one of the reasons identified in Maine Forest Service Rule, Chapter 20, Forest Regeneration and Clearcutting Standards. The rationale for a harvest that will result in an understocked stand must specify actions that will be taken to retain adequate residual stocking to reduce the risk of blowdown and to minimize damage to the residual stand and advanced regeneration, ~~including~~ These measures include, without limitation, minimizing the area occupied by skid trails, and/or to create~~creating~~ conditions suitable for the prompt regeneration of the site to commercially valuable species. The rationale must include a description of the residual stand that will result from the harvest, including but not limited to species, stocking, tree condition, size classes, and other stand characteristics. [Minor grammatical changes.]
 - g. An assessment of the soil erosion potential of the harvest area; and specification of actions that will be taken to minimize rutting, the potential for soil erosion, and the deposition of sediment into water bodies. These actions should include without

limitation planning the layout of skid trails and yards to minimize erosion, and the use of applicable Best Management Practices.

- h. A description of how the proposed harvest will protect known occurrences of threatened or endangered species and rare or exemplary natural communities.
 - i. A description of how the proposed harvest will protect significant wildlife habitat and essential wildlife habitat; and water quality; wetlands; and riparian zones; if any, including the use of applicable Best Management Practices.
 - j. A stand-specific map prepared at a scale adequate to identify individual stands clearly, but no less than 1:15,840 (1 in. = 1,320 ft. or 20 chains) or larger. The map must identify wetlands, water bodies, and any known occurrences of threatened or endangered species, rare ~~or exemplary~~ natural communities, and significant wildlife habitat and essential wildlife habitat, if present. The map must contain a legend, north arrow, landowner name, town, date of preparation, and the name of the preparer. The landowner must update the map to conform to conditions in the field. [Change made by legislative committee.]
2. The timber harvest plan must be implemented during the harvest.
 3. A Licensed Forester must attest in writing within 60 days of completion of the harvest or expiration of the Forest Operations Notification, whichever is earlier, that the harvest has complied with the timber harvest plan. The attestation must include the Licensed Forester's signature and license number.
 4. The timber harvest plan [and the attestation required in subsection 6.C.3](#) must be kept on file by the landowner and must be made available to the Bureau for at least seven years following the completion of the harvest or the expiration of the Forest Operations Notification, whichever is later. [Addition made to clarify reference to attestation.]

D. Option 4. Unforeseen economic hardship ~~permitting post-harvest certification.~~

If the landowner demonstrates to the satisfaction of the Bureau, that unforeseen circumstances create an economic hardship and necessitate the sale of a parcel, the requirements of this rule do not apply, as set forth in a written decision by the Bureau. A landowner will only be allowed to use this option once and only for a single parcel in any five-year period. [Change made by legislative committee.]

SECTION 7. RESPONSIBILITY

All responsible parties may be jointly and severally responsible for compliance with this rule, and liable for violations of this rule.

SECTION 8. VARIANCE

A variance to the strict applications of these rules may be granted as specified in MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards, Section 6).

Maine Department of Conservation – Maine Forest Service
Chapter 23 Rule –Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting

SECTION 9. VIOLATIONS

Any responsible party involved in any activity in violation of this rule commits a civil violation, and shall be penalized in accordance with 12 MRSA, Chapter 809, and other applicable law.

SECTION 10. EFFECTIVE DATE

The effective date of this rule is January 2, 2005.

STATUTORY AUTHORITY: 12 MRSA, Chapter 805, sub-chapter 3-A; Public Laws 2003, Chapter 422.